

CHAPTER 34

MENTAL HEALTH PROFESSIONALS — SCOPE OF PRACTICE

H.F. 593

AN ACT authorizing mental health professionals to perform certain functions relating to persons with substance-related disorders and persons with mental illness.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 125.2, Code 2017, is amended by adding the following new subsection: NEW SUBSECTION. 10A. “*Mental health professional*” means the same as defined in [section 228.1](#).

Sec. 2. Section 125.12, subsection 3, Code 2017, is amended to read as follows:

3. The director shall provide for adequate and appropriate treatment for persons with substance-related disorders and concerned family members admitted under [sections 125.33](#) and [125.34](#), or under [section 125.75](#), [125.81](#), or [125.91](#). Treatment shall not be provided at a correctional institution except for inmates. A mental health professional, ~~as defined in [section 228.1](#),~~ who is employed by a treatment provider under the program may provide treatment to a person with co-occurring substance-related and mental health disorders. Such treatment may also be provided by a person employed by such a treatment provider who is receiving the supervision required to meet the definition of mental health professional but has not completed the supervision component.

Sec. 3. Section 125.33, subsections 1 and 3, Code 2017, are amended to read as follows:

1. A person with a substance-related disorder may apply for voluntary treatment or rehabilitation services directly to a facility or to a licensed physician and surgeon or osteopathic physician and surgeon or to a mental health professional. If the proposed patient is a minor or an incompetent person, a parent, a legal guardian or other legal representative may make the application. The licensed physician and surgeon or osteopathic physician and surgeon, mental health professional, or any employee or person acting under the direction or supervision of the physician and surgeon or osteopathic physician and surgeon, mental health professional, or the facility shall not report or disclose the name of the person or the fact that treatment was requested or has been undertaken to any law enforcement officer or law enforcement agency; nor shall such information be admissible as evidence in any court, grand jury, or administrative proceeding unless authorized by the person seeking treatment. If the person seeking such treatment or rehabilitation is a minor who has personally made application for treatment, the fact that the minor sought treatment or rehabilitation or is receiving treatment or rehabilitation services shall not be reported or disclosed to the parents or legal guardian of such minor without the minor’s consent, and the minor may give legal consent to receive such treatment and rehabilitation.

3. A person with a substance-related disorder seeking treatment or rehabilitation and who is either addicted or dependent on a chemical substance may first be examined and evaluated by a licensed physician and surgeon or osteopathic physician and surgeon or a mental health professional who may prescribe, if authorized or licensed to do so, a proper course of treatment and medication, if needed. The licensed physician and surgeon or osteopathic physician and surgeon or mental health professional may further prescribe a course of treatment or rehabilitation and authorize another licensed physician and surgeon or osteopathic physician and surgeon, mental health professional, or facility to provide the prescribed treatment or rehabilitation services. Treatment or rehabilitation services may be provided to a person individually or in a group. A facility providing or engaging in treatment or rehabilitation shall not report or disclose to a law enforcement officer or law enforcement agency the name of any person receiving or engaged in the treatment or rehabilitation; nor shall a person receiving or participating in treatment or rehabilitation report or disclose the name of any other person engaged in or receiving treatment or rehabilitation or that the program is in existence, to a law enforcement officer or law enforcement agency. Such information shall not be admitted in evidence in any court, grand jury, or administrative

proceeding. However, a person engaged in or receiving treatment or rehabilitation may authorize the disclosure of the person's name and individual participation.

Sec. 4. Section 125.34, subsections 3 and 7, Code 2017, are amended to read as follows:

3. A person who arrives at a facility and voluntarily submits to examination shall be examined by a licensed physician or mental health professional as soon as possible after the person arrives at the facility. The person may then be admitted as a patient or referred to another health facility. The referring facility shall arrange for transportation.

7. A licensed physician and surgeon or osteopathic physician and surgeon, mental health professional, facility administrator, or an employee or a person acting as or on behalf of the facility administrator, is not criminally or civilly liable for acts in conformity with [this chapter](#), unless the acts constitute willful malice or abuse.

Sec. 5. Section 125.75, subsection 2, paragraph c, subparagraph (1), Code 2017, is amended to read as follows:

(1) A written statement of a licensed physician or mental health professional in support of the application.

Sec. 6. Section 125.78, subsection 3, paragraph b, Code 2017, is amended to read as follows:

b. Requiring an examination of the respondent, prior to the hearing, by one or more licensed physicians or mental health professionals who shall submit a written report of the examination to the court as required by [section 125.80](#).

Sec. 7. Section 125.80, Code 2017, is amended to read as follows:

125.80 Physician's or mental health professional's examination — report — scheduling of hearing.

1. a. An examination of the respondent shall be conducted within a reasonable time and prior to the commitment hearing by one or more licensed physicians or mental health professionals as required by the court's order. If the respondent is taken into custody under [section 125.81](#), the examination shall be conducted within twenty-four hours after the respondent is taken into custody. If the respondent desires, the respondent may have a separate examination by a licensed physician or mental health professional of the respondent's own choice. The court shall notify the respondent of the right to choose a licensed physician or mental health professional for a separate examination. The reasonable cost of the examinations shall be paid from county funds upon order of the court if the respondent lacks sufficient funds to pay the cost.

b. A licensed physician or mental health professional conducting an examination pursuant to [this section](#) may consult with or request the participation in the examination of facility personnel, and may include with or attach to the written report of the examination any findings or observations by facility personnel who have been consulted or have participated in the examination.

c. If the respondent is not taken into custody under [section 125.81](#), but the court is subsequently informed that the respondent has declined to be examined by a licensed physician or mental health professional pursuant to the court order, the court may order limited detention of the respondent as necessary to facilitate the examination of the respondent by the licensed physician or mental health professional.

2. A written report of the examination by a court-designated licensed physician or mental health professional shall be filed with the clerk prior to the hearing date. A written report of an examination by a licensed physician or mental health professional chosen by the respondent may be similarly filed. The clerk shall immediately:

a. Cause a report to be shown to the judge who issued the order.

b. Cause the respondent's attorney to receive a copy of the report of a court-designated licensed physician or mental health professional.

3. If the report of a court-designated licensed physician or mental health professional is to the effect that the respondent is not a person with a substance-related disorder, the court, without taking further action, may terminate the proceeding and dismiss the application on its own motion and without notice.

4. If the report of a court-designated licensed physician or mental health professional is to the effect that the respondent is a person with a substance-related disorder, the court shall schedule a commitment hearing as soon as possible. The hearing shall be held not more than forty-eight hours after the report is filed, excluding Saturdays, Sundays, and holidays, unless an extension for good cause is requested by the respondent, or as soon thereafter as possible if the court considers that sufficient grounds exist for delaying the hearing.

Sec. 8. Section 125.82, subsection 3, Code 2017, is amended to read as follows:

3. The person who filed the application and a licensed physician, mental health professional as defined in [section 228.1](#), or certified alcohol and drug counselor certified by the nongovernmental Iowa board of substance abuse certification who has examined the respondent in connection with the commitment hearing shall be present at the hearing, unless the court for good cause finds that their presence or testimony is not necessary. The applicant, respondent, and the respondent's attorney may waive the presence or telephonic appearance of the licensed physician, mental health professional, or certified alcohol and drug counselor who examined the respondent and agree to submit as evidence the written report of the licensed physician, mental health professional, or certified alcohol and drug counselor. The respondent's attorney shall inform the court if the respondent's attorney reasonably believes that the respondent, due to diminished capacity, cannot make an adequately considered waiver decision. "Good cause" for finding that the testimony of the licensed physician, mental health professional, or certified alcohol and drug counselor who examined the respondent is not necessary may include, but is not limited to, such a waiver. If the court determines that the testimony of the licensed physician, mental health professional, or certified alcohol and drug counselor is necessary, the court may allow the licensed physician, mental health professional, or certified alcohol and drug counselor to testify by telephone. The respondent shall be present at the hearing unless prior to the hearing the respondent's attorney stipulates in writing that the attorney has conversed with the respondent, and that in the attorney's judgment the respondent cannot make a meaningful contribution to the hearing, or that the respondent has waived the right to be present, and the basis for the attorney's conclusions. A stipulation to the respondent's absence shall be reviewed by the court before the hearing, and may be rejected if it appears that insufficient grounds are stated or that the respondent's interests would not be served by the respondent's absence.

Sec. 9. Section 125.86, subsection 3, paragraph b, Code 2017, is amended to read as follows:

b. An advanced registered nurse practitioner who is not certified as a psychiatric advanced registered nurse practitioner but who meets the qualifications set forth in the definition of a mental health professional in [section 228.1](#), may complete periodic reports pursuant to paragraph "a".

Sec. 10. Section 125.91, subsection 3, Code 2017, is amended to read as follows:

3. The attending physician shall examine and may detain the person pursuant to the magistrate's order for a period not to exceed forty-eight hours from the time the order is dated, excluding Saturdays, Sundays, and holidays, unless the order is dismissed by a magistrate. The facility may provide treatment which is necessary to preserve the person's life or to appropriately control the person's behavior if the behavior is likely to result in physical injury to the person or others if allowed to continue or is otherwise deemed medically necessary by the attending physician or mental health professional, but shall not otherwise provide treatment to the person without the person's consent. The person shall be discharged from the facility and released from detention no later than the expiration of the forty-eight-hour period, unless an application for involuntary commitment is filed with the clerk pursuant to [section 125.75](#). The detention of a person by the procedure in [this section](#), and not in excess of the period of time prescribed by [this section](#), shall not render the peace officer, attending physician, or facility detaining the person liable in a criminal or civil action for false arrest or false imprisonment if the peace officer, attending physician, mental health

professional, or facility had reasonable grounds to believe that the circumstances described in [subsection 1](#) were applicable.

Sec. 11. Section 125.92, subsection 4, Code 2017, is amended to read as follows:

4. Enjoy all legal, medical, religious, social, political, personal, and working rights and privileges, which the person would enjoy if not detained, taken into immediate custody, or committed, consistent with the effective treatment of the person and of the other persons in the facility. If the person's rights are restricted, the physician's or mental health professional's direction to that effect shall be noted in the person's record. The person or the person's next of kin or guardian shall be advised of the person's rights and be provided a written copy upon the person's admission to or arrival at the facility.

Sec. 12. Section 229.6, subsection 2, paragraph c, subparagraph (1), Code 2017, is amended to read as follows:

(1) A written statement of a licensed physician or mental health professional in support of the application.

Sec. 13. Section 229.8, subsection 3, paragraph b, Code 2017, is amended to read as follows:

b. Order an examination of the respondent, prior to the hearing, by one or more licensed physicians or mental health professionals who shall submit a written report on the examination to the court as required by [section 229.10](#).

Sec. 14. Section 229.10, Code 2017, is amended to read as follows:

229.10 Physicians' or mental health professionals' examination — report.

1. a. An examination of the respondent shall be conducted by one or more licensed physicians or mental health professionals, as required by the court's order, within a reasonable time. If the respondent is detained pursuant to [section 229.11, subsection 1](#), paragraph "b", the examination shall be conducted within twenty-four hours. If the respondent is detained pursuant to [section 229.11, subsection 1](#), paragraph "a" or "c", the examination shall be conducted within forty-eight hours. If the respondent so desires, the respondent shall be entitled to a separate examination by a licensed physician or mental health professional of the respondent's own choice. The reasonable cost of the examinations shall, if the respondent lacks sufficient funds to pay the cost, be paid by the regional administrator from mental health and disability services region funds upon order of the court.

b. Any licensed physician or mental health professional conducting an examination pursuant to [this section](#) may consult with or request the participation in the examination of any consulting mental health professional, and may include with or attach to the written report of the examination any findings or observations by any consulting mental health professional who has ~~been so consulted or has so~~ participated in the examination.

c. If the respondent is not taken into custody under [section 229.11](#), but the court is subsequently informed that the respondent has declined to be examined by ~~the one or more~~ licensed physician or physicians or mental health professionals pursuant to the court order, the court may order such limited detention of the respondent as is necessary to facilitate the examination of the respondent by ~~the one or more~~ licensed physician or physicians or mental health professionals.

2. A written report of the examination by ~~the one or more~~ court-designated physician or physicians or mental health professionals shall be filed with the clerk prior to the time set for hearing. A written report of any examination by a physician chosen by the respondent may be similarly filed. The clerk shall immediately do all of the following:

a. Cause the report or reports to be shown to the judge who issued the order; ~~and,~~

b. Cause the respondent's attorney to receive a copy of the report of ~~the court-designated~~ physician or physicians or reports.

3. If the report of one or more of the court-designated ~~physician or physicians or mental health professionals~~ is to the effect that the individual is not seriously mentally impaired, the court may without taking further action terminate the proceeding and dismiss the application on its own motion and without notice.

4. If the report of one or more of the court-designated physician or physicians or mental health professionals is to the effect that the respondent is seriously mentally impaired, the court shall schedule a hearing on the application as soon as possible. The hearing shall be held not more than forty-eight hours after the report is filed, excluding Saturdays, Sundays and holidays, unless an extension for good cause is requested by the respondent, or as soon thereafter as possible if the court considers that sufficient grounds exist for delaying the hearing.

Sec. 15. Section 229.22, subsection 2, paragraph a, subparagraphs (2), (3), (4), and (5), Code 2017, are amended to read as follows:

(2) Upon delivery of the person believed mentally ill to the facility or hospital, the examining physician, examining physician assistant, examining mental health professional, or examining psychiatric advanced registered nurse practitioner may order treatment of that person, including chemotherapy, but only to the extent necessary to preserve the person's life or to appropriately control behavior by the person which is likely to result in physical injury to that person or others if allowed to continue.

(3) The peace officer who took the person into custody, or other party who brought the person to the facility or hospital, shall describe the circumstances of the matter to the examining physician, examining physician assistant, examining mental health professional, or examining psychiatric advanced registered nurse practitioner. If the person is a peace officer, the peace officer may do so either in person or by written report.

(4) If the examining physician, examining physician assistant, examining mental health professional, or examining psychiatric advanced registered nurse practitioner finds that there is reason to believe that the person is seriously mentally impaired, and because of that impairment is likely to physically injure the person's self or others if not immediately detained, the examining physician, examining physician assistant, examining mental health professional, or examining psychiatric advanced registered nurse practitioner shall at once communicate with the nearest available magistrate as defined in [section 801.4, subsection 10](#).

(5) The magistrate shall, based upon the circumstances described by the examining physician, examining physician assistant, examining mental health professional, or examining psychiatric advanced registered nurse practitioner, give the examining physician, examining physician assistant, examining mental health professional, or examining psychiatric advanced registered nurse practitioner oral instructions either directing that the person be released forthwith or authorizing the person's detention in an appropriate facility. A peace officer from the law enforcement agency that took the person into custody, if available, during the communication with the magistrate, may inform the magistrate that an arrest warrant has been issued for or charges are pending against the person and request that any oral or written order issued under [this subsection](#) require the facility or hospital to notify the law enforcement agency about the discharge of the person prior to discharge. The magistrate may also give oral instructions and order that the detained person be transported to an appropriate facility.

Sec. 16. Section 229.22, subsection 3, Code 2017, is amended to read as follows:

3. The chief medical officer of the facility or hospital shall examine and may detain and care for the person taken into custody under the magistrate's order for a period not to exceed forty-eight hours from the time such order is dated, excluding Saturdays, Sundays and holidays, unless the order is sooner dismissed by a magistrate. The facility or hospital may provide treatment which is necessary to preserve the person's life, or to appropriately control behavior by the person which is likely to result in physical injury to the person's self or others if allowed to continue, but may not otherwise provide treatment to the person without the person's consent. The person shall be discharged from the facility or hospital and released from custody not later than the expiration of that period, unless an application is sooner filed with the clerk pursuant to [section 229.6](#). Prior to such discharge the facility or hospital shall, if required by [this section](#), notify the law enforcement agency requesting such notification about the discharge of the person. The law enforcement agency shall retrieve the person no later than six hours after notification from the facility or hospital but

in no circumstances shall the detention of the person exceed the period of time prescribed for detention by [this subsection](#). The detention of any person by the procedure and not in excess of the period of time prescribed by [this section](#) shall not render the peace officer, physician, mental health professional, facility, or hospital so detaining that person liable in a criminal or civil action for false arrest or false imprisonment if the peace officer, physician, mental health professional, facility, or hospital had reasonable grounds to believe the person so detained was mentally ill and likely to physically injure the person's self or others if not immediately detained, or if the facility or hospital was required to notify a law enforcement agency by [this section](#), and the law enforcement agency requesting notification prior to discharge retrieved the person no later than six hours after the notification, and the detention prior to the retrieval of the person did not exceed the period of time prescribed for detention by [this subsection](#).

Sec. 17. Section 229.23, subsection 3, Code 2017, is amended to read as follows:

3. In addition to protection of the person's constitutional rights, enjoyment of other legal, medical, religious, social, political, personal and working rights and privileges which the person would enjoy if the person were not so hospitalized or detained, so far as is possible consistent with effective treatment of that person and of the other patients of the hospital. If the patient's rights are restricted, the physician's or mental health professional's direction to that effect shall be noted on the patient's record. The department of human services shall, in accordance with [chapter 17A](#) establish rules setting forth the specific rights and privileges to which persons so hospitalized or detained are entitled under [this section](#), and the exceptions provided by [section 17A.2, subsection 11](#), paragraphs "a" and "k", shall not be applicable to the rules so established. The patient or the patient's next of kin or friend shall be advised of these rules and be provided a written copy upon the patient's admission to or arrival at the hospital.

Sec. 18. Section 229.25, subsection 1, paragraph a, subparagraph (1), Code 2017, is amended to read as follows:

(1) The information is requested by a licensed physician or mental health professional, attorney, or advocate who provides the chief medical officer with a written waiver signed by the person about whom the information is sought.

Approved April 7, 2017